IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1014 OF 2006

Shri Ramkrishan Hemraj Pardeshi & ors. ..Petitioners

Versus

Shri Pramod Ramvilas Malpani ..Respondent

Mr.U.B.Nighot for petitioners

Mr.P.S.Dani for respondent

CORAM : P.V.KAKADE, J.

DATE : 17TH APRIL, 2006

P.C.:

1. Heard the learned counsel for both the parties. Perused the record.

2. The petitioner has preferred this petition against the judgment and order passed by Small Causes Court, Pune dated 3.2.2006 dismissing the application under Order 21 Rule 97 and 101 of Civil Procedure Code.

3. One Tuljaram Hemraj Pardeshi, since deceased, was tenant residing in the suit premises. He had taken the said premises on rent basis, prior to 40 years and since then the petitioners and Tuljaram Pardeshi were residing in the suit premises. Tuljaram Pardeshi died on 15.5.1989. Raju, Sanjay, Shyam, Deepak, Ganesh and Sushil are the sons of Tuljaram Pardeshi. They without giving intimation to the present petitioners got prepared rent receipt in the name of Sanjay. The opponent had filed the Suit No.951 of 1991 for possession of the suit premises against the said Sanjay, which was decreed and the appeal preferred by Sanjay was also dismissed. After receipt of notice under Order 21, Rule 22 of C.P.C. in R.D.No.152 of 2004, the present petitioners allegedly came to know about the said decree and appeal in that case filed by Sanjay. According to the petitioners they were not party to the suit and appeal and therefore, decree passed in the said proceedings were not binding upon them and hence according to them the decree passed in Suit No.951 of 1991 and order passed in appeal were not binding on them and execution proceedings filed on the basis of those decree were not binding upon them and hence the application came to be filed in the execution court.

4. The opponent contested the application challenging the jurisdiction of the court vis-a-vis it was submitted that by agreement between the legal heirs of Tuljaram Pardeshi, Sanjay had become tenant of the suit premises and therefore, application sought to be dismissed.

5. After hearing the learned counsel for the petitioners, it appears that only thrust of his submission is with regard to the letter/agreement dated 4.4.1991, which was produced on record as Exh.42. It was submitted on behalf of the petitioner that the said document was produced on record for the first time in the said proceeding and he was not aware of the same and in fact he had made an application challenging the authenticity of the said document and requested the lower court to refer the said document to the hand-writing expert and necessary action

6. It is apparent from the cross-examination of the present petitioner, of which record is annexed, which shows that he had full knowledge of the execution of the said receipt, which was made in the name of Sanjay and he

had given his consent. Not only this but he is also signatory of the said document dated 4.4.1991.

7. On the basis of this admission the learned lower court has concluded that the petitioner's admission to that effect was clearly indicative of the fact that he was denying consent for passing the rent receipt in the name of Sanjay and he was aware of the execution of the said rent receipt. Under the circumstances, the application contemplated under Order 21 Rule 97 and 101 of Civil Procedure Code was held not tenable in law. In my considered view, the order passed by the trial court appears to be legal and proper in view of the clear admission given by the petitioner himself in the course of his cross-examination and as such no interference is required in the matter.

8. In the result the petition stands dismissed with no order as to costs.